

FAP 110-10-00**GENERAL CONDITIONS AND INSTRUCTIONS FOR SOLICITATIONS AND CONTRACTS**

The following general conditions shall be incorporated by reference in each Solicitation and resulting contract for commodities or services issued by the Commonwealth of Kentucky.

By submitting a bid to the Commonwealth, a bidder agrees to these conditions.

1. DEFINITIONS:

- a. "Bid" means an offer, proposal, solicitation response, or quotation.
- b. "IFB" means an Invitation For Bids.
- c. "Offer" means a bid or a proposal.
- d. "Online Bid Response" means an electronic offer in the state's procurement system, if authorized by the solicitation for electronic response, which is in formal bid status.
- e. "RFI" means a Request for Information.
- f. "RFP" means a Request for Proposals.
- g. "RFQ" means a Request for Quotations.
- h. "Solicitation" means an IFB, RFI, RFP, or RFQ.
- i. "Tiered Pricing" means a determination of price based on volume, where the larger the volume, the larger the discount offered.

2. PREPARATION OF OFFERS:

- a. An offeror shall examine the drawings, specifications, schedule, and all instructions.
- b. An offer shall set forth full, accurate, and complete information as required by the solicitation. An offer that contains terms and conditions in conflict with the terms of the solicitation or Commonwealth statutes and regulations may be rejected.
- c. An electronic or facsimile offer shall not be considered unless authorized by the solicitation. An offer may be modified by electronic or facsimile notice, if notice is received prior to the hour and date specified for receipt of offers. An electronic or facsimile modification shall not mention unit prices or total price; but shall only refer to percentage change or numerical change.
- d. At the discretion of the Commonwealth, an offer may be submitted online in the state's procurement system, in accordance with section 5. If authorized by the solicitation, an online response shall be accepted and is the preferred method of bidding. If the offeror elects to submit a hard copy, the offeror shall sign the hard copy solicitation in ink and type or print in ink his name, firm, address, telephone number, and date. The person signing the offer shall initial an erasure or other change in ink.
- e. Unit price for each unit offered shall be shown and shall include packing, unless otherwise specified. A total shall be entered in the amount column of the schedule for each item offered. In case of discrepancy between a unit price and extended price, the unit price shall govern.

- f. Cash discounts shall not be considered in making the award of the contract.
- g. Trade discounts, if offered, shall be deducted by the vendor in calculating the unit price quoted, unless otherwise stated.
- h. Quantity discounts, if offered, shall be included in the price of the item. The unit price shown on the contract shall be the net price less the discount unless otherwise stated. Tiered pricing may also be used.
- i. Time discounts shall be considered if the Office of Material and Procurement Services or the purchasing agency deems it in the Commonwealth's best interest.
- j. An offer for supplies or services other than those specified shall not be considered unless authorized by the solicitation.
- k. An offeror shall state a definite time for delivery of supplies or performance of services unless otherwise specified in the solicitation.
- l. Time, if stated as a number of days, shall include Saturdays, Sundays, and holidays.

3. OFFEROR CLARIFICATION - REQUEST AND RESPONSE: Any explanation desired by an offeror regarding the meaning or interpretation of the solicitation drawings or specifications shall be requested via electronic or written communication not less than seven (7) calendar days prior to the bid opening date. Oral explanations or instructions given before the award of the contract shall not be binding. Any information given to a prospective offeror concerning a solicitation shall be furnished to all prospective offerors as a modification to the solicitation, if such information is necessary to offerors in submitting offers on the solicitation or if the lack of such information would be prejudicial to uninformed offerors.

4. ACKNOWLEDGMENT OF MODIFICATIONS TO SOLICITATIONS: Receipt of a modification to a solicitation shall be acknowledged by the offeror. Written or electronic acknowledgment shall be received prior to the hour and date specified for receipt of offers. Verbal acknowledgment shall not be accepted. Failure to acknowledge a modification shall cause the bid to be considered non-responsive, unless waived in accordance with 200 KAR 5:306 § 7. Acknowledgment of the most recent modification shall constitute acknowledgment of all prior modifications.

5. BID SUBMISSION COMPLIANCE AND PROVISIONS: A bidder shall:

- a. Submit a bid or quotation in legible form via electronic or hard copy Solicitation or Request For Quotation form, respectively.
- b. Ensure that a bid response submitted using the online bid response feature of the state's procurement system contains all required information for the solicitation. An online bid response that is incomplete or not marked as formal and authenticated by the vendor with an electronic signature shall be considered non-responsive and shall not be eligible for award. A vendor who submits an online bid response may subsequently submit an exact hard copy of the response. If any discrepancies exist between the online bid response and the hard copy, the bid may be considered non-responsive and may not be eligible for award. If submitting a hard copy of the bid response after an online bid submission, the vendor shall send the following hard copy documents to the issuing agency by the closing date and time.
 - (i) Copy of the online bidding confirmation page that shows a formal bid status and confirmation number of the bidder's online solicitation response.

- (ii) Paper copy bid submission, signed in ink, which complies with all statutes, administrative regulations and policies.
- c. Ensure the hard copy is signed by a proper agent of the firm prior to the bid opening. No hard copy bid shall be considered valid unless filled out in ink or typewritten and signed in ink in the space provided on the Solicitation. An electronic bid shall be authorized by the proper agent of the firm, prior to sending, and shall include the appropriate authentication code recognized by the Office of Material and Procurement Services.
- d. Specify brand name, trademark, model number and catalog number for each item bid, if appropriate.
- e. Offer only one price for each item bid and offer only one product for each item of the Solicitation, unless the Solicitation specifically states that more than one product may be bid for a single item of the contract. Offering more than one product for any item of the Solicitation shall constitute multiple bidding and shall automatically disqualify the entire bid, unless multiple bids are requested by the Solicitation.
- f. Extend prices for items, if applicable, and provide an extended total and a grand total, if appropriate. If an error is made in an extension of prices, the unit price shall prevail.
- g. Quote prices F.O.B. destination, freight prepaid and included in the unit pricing, unless otherwise stated in the Solicitation. "F.O.B. Factory-Freight Allowed" or other such terms shall not be quoted.
- h. Provide technical specifications and any other data the Office of Material and Procurement Services needs to properly evaluate the brands of products offered as equal to those specified in the Solicitation prior to the date the Solicitation is closed, and state clearly, on the bid proposal or in an electronic attachment, any deviation from the brand specified.
- i. Not include federal excise taxes, Kentucky sales or Kentucky use taxes in the bid.
- j. Provide new and current commodities and latest models, unless otherwise specified in the Solicitation.
- k. Provide firm prices, unless otherwise stated in the Solicitation.
- l. Ensure the bid response is submitted as a formal online bid in the state's procurement system or arrives in the Office of Material and Procurement Services before the time specified in the Solicitation. The time shown in the Bid Receipt Room in the Office of Material and Procurement Services for hard copy responses shall be considered the correct time. A late bid response shall not be considered unless it is postmarked before the date specified in the Solicitation and is the only responsive bid received. A hand-delivered bid shall not be considered unless it is delivered before the time and date specified in the Solicitation. An online bid response shall be assigned a date and time stamp from the state's procurement system at the time of final approval and formal submission by the vendor. The state's procurement system will not allow submission of an online response after the published date and time for bid closing. The Commonwealth conducts business in different time zones. The vendor shall be aware of the current time zone for the Solicitation to which the vendor responds. Closing times for all Solicitations that permit online bidding shall be deemed to be Eastern time.
- m. Maintain a bid as a firm offer with respect to price, terms and conditions for the period of time specified in the Solicitation. After closing, a bid may be withdrawn in accordance

with 200 KAR 5:306(6). Prior to opening, a bid shall be withdrawn at the vendor's request.

- n. Accept any contract awarded on the terms and conditions stated in the Solicitation.
- o. Submit a bid bond or check, if specified in the Solicitation. A bid may be rejected for failure to comply with conditions or specifications regarding either bonds or checks.
- p. Comply with the Solicitation Instructions and requests regarding the submission of samples, and pay shipping costs for samples either sent to or returned from the Office of Material and Procurement Services. Samples shall become the property of the Commonwealth unless a bidder requests return within 30 days after award of a contract. If not destroyed by testing, samples shall be returned at an offeror's request and expense, unless otherwise specified by the solicitation.
- q. Make available records, papers, books, or other documents during performance or in connection with a preliminary investigation of bidder's financial status. Information to be made available shall be limited to the information generally available to the public, if it satisfactorily indicates the bidder's ability to perform as specified in the contract. If the initial investigation does not reasonably satisfy the Office of Material and Procurement Services that the bidder can perform the contract, the Office may request additional information before a contract is awarded.
- r. File a performance bond, if requested by the Office of Material and Procurement Services, whether or not a bond was required by the Solicitation. The bidder shall sign the bond as principal and shall have the bond signed by a surety company authorized to do business in the Commonwealth of Kentucky. If the surety has its authority to do business in Kentucky revoked or withdraws from doing business in the Commonwealth, the bidder shall promptly obtain another surety on the bond. A bond furnished shall be conditioned upon the full performance of all obligations imposed on the bidder by his contract with the Commonwealth and shall provide for recovery by the Commonwealth of all damages suffered by it by reason of the bidder's failure to perform any contract obligations. Recovery shall be permissible from the bidder and the surety, or either of them.
- s. Obtain a bond meeting the requirements of the Solicitation from the bidder's source of supply, if requested to do so by the Office of Material and Procurement Services. If a bond is required, it shall be issued to the Commonwealth of Kentucky and shall be conditioned on the source of supply making available to the bidder such equipment or products as will enable the bidder to fulfill its obligations under the contract with the Commonwealth.
- t. Submit the required bonds in a form approved by the Office of Material and Procurement Services.
- u. Not assign any interest, right or duty in any contract with the Commonwealth without the written consent of the Commonwealth, except that an assignment of benefits may be executed in accordance with FAP 120-08-07. If an assignment of benefits is a partial assignment, the warrant issued by the Division of Statewide Accounting Services shall be payable jointly to the vendor and the assignee and shall be forwarded to the assignee. An assignee shall be subject to the set-off rights of the Commonwealth provided in KRS 371.040 and KRS 44.030.
- v. Indicate the Solicitation number, opening date, and time on the lower left corner of the response envelope for a hard copy bid.

- w. If state offices are closed on days other than scheduled holidays, bid openings scheduled for that day shall be held on the next normal working day at the scheduled hour. The Commonwealth may modify the Solicitation to extend the bid closing date and time to accommodate online bid responses. If revised, the bid closing date and time shall be posted on the Commonwealth's eProcurement web site.
- x. If operating hours of the issuing office are delayed, bid openings at the issuing office shall be delayed by the same amount of time. The closing date and time for online bid submissions shall not be extended.
- y. If a power outage or system failure occurs within the Commonwealth's eProcurement web site that prevents online bid responses or opening, bid closing may be delayed by modifying the Solicitation and posting the revised closing date and time on the Commonwealth's eProcurement web site.

6. COMPLIANCE WITH STATE AND FEDERAL LAW: In addition to any other remedies at law or in equity, the Office of Material and Procurement Services may cancel any contract if there is sufficient evidence to show that:

- a. The contract was obtained by fraud, collusion, conspiracy or other unlawful means, or
- b. The contract conflicts with any statutory or Constitutional provision of the Commonwealth of Kentucky or of the United States.

7. GOVERNING LAW: The laws of the Commonwealth of Kentucky shall govern contracts or orders placed as a result of the offer. The rights and obligations of the parties shall be determined in accordance with the laws of the Commonwealth of Kentucky. An offer conditioned upon governance by the laws of a state other than Kentucky shall not be considered.

8. COMPENSABLE DAMAGES FOR BREACH: The following items shall be included as compensable damages to the Commonwealth of Kentucky for any breach of contract with the Commonwealth:

- a. Replacement costs.
- b. The cost of repeating the competitive bidding procedures.
- c. Expenses incurred as the result of delay in obtaining replacements.

The enumeration of compensable damages contained in this section is not intended to be exclusive and shall not operate to bar recovery by the Commonwealth for any other damages occasioned by the vendor's breach of contract. However, if the contract provides for liquidated damages, the liquidated damages shall be in lieu of all other damages, including those enumerated.

9. DELIVERY, TRANSPORTATION AND PACKAGING: If awarded a contract, the bidder shall:

- a. Make delivery as stated in the contract. Delivery shall be made by the end of the state's fiscal year in which the contract is awarded unless otherwise specified in the contract.
- b. Make delivery during normal working days and hours to the point or points specified in the Solicitation. Normal working hours are 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays.

- c. Pay all packing, transportation, and delivery charges to the delivery point specified by the using agency. If the delivery point specified is changed by the using agency, the vendor shall be entitled to reimbursement for any increased cost of transportation from the F.O.B. point shown in the contract document to the delivery point utilized by the agency.
- d. Adequately pack all commodities and equipment, according to accepted commercial practice and the packaging and marketing instructions in the contract document. No charges shall be made for packing cases, bailing, crating, barrels, drums, bags or other containers, except that if the bid so specifies, the vendor may make a memorandum charge and require the using agency to return the containers for credit with transportation costs paid by the vendor or pay for the containers if not returned in a reasonable length of time.

10. REPORTING COMPLIANCE OR BREACH: Upon being declared the successful bidder, the contractor or vendor shall complete an Equal Employment Opportunity (EEO) template designed by the Finance and Administration Cabinet. The EEO form shall provide a breakdown of the bidding party's existing workforce, indicating the race, sex, age, position held, county and state of residence, and date of employment of each employee.

A successful bidder shall submit data as required by KRS 45.550 to 45.640 and a statement of intent to comply in full with all requirements of the Kentucky Civil Rights Act.

11. FAILURE TO COMPLY: Failure to comply with any provisions of KRS 45.550 to 45.640 shall constitute a material breach of contract.

12. ADDITIONAL EQUAL EMPLOYMENT PROVISIONS UNDER CONTRACTS UTILIZING FEDERAL FUNDS: The contractor shall comply with all provisions of Presidential Executive Order 11246 (41 CFR, Part 60-1.4) as amended.

13. TERMINATION OF CONTRACTS: A contract may be terminated for default by the vendor, for the convenience of the Commonwealth, or for lack of appropriation in accordance with 200 KAR 5:312.

14. CONTRACT DISPUTES: A dispute concerning a question of fact arising under a contract between the Commonwealth and a contractor, if not disposed of by mutual agreement, shall be decided in accordance with KRS 45A.230 and 45A.235. Pending final decision of a dispute, the contractor shall proceed diligently with the performance of the contract.

15. EQUAL EMPLOYMENT COMPLIANCE: During the performance of a contract, the contractor or vendor shall:

- a. Not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, or national origin.
- b. Take affirmative action in regard to employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, so as to ensure that applicants are employed and that employees during employment are treated without regard to their race, color, religion, sex, age, disability, or national origin. However, if layoffs occur, employees shall be laid off according to seniority with the most recently hired employee being laid off first. Employees shall be recalled in the reverse of the way the employees were laid off.
- c. State in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, age, disability, or national origin.

- d. Post notices in conspicuous places, available to employees and applicants for employment, setting forth the provision of the nondiscrimination clauses required by this section.
- e. Send a notice to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding advising the labor union or workers' representative of the contractor's commitments under the nondiscrimination clauses.

16. COMPLIANCE WITH FEDERAL REQUIREMENTS: If a procurement involves the expenditure of federal assistance or contract grant funds, the awarded contractor shall comply with federal law and authorized regulations that are mandatorily applicable and that are not set forth in the Solicitation.

17. TERMS FOR PROMPT PAYMENT: A bill shall be paid within 30 working days of either the receipt of correct invoice, or receipt of goods or services in satisfactory condition. A penalty payment of one percent (1%) per month shall be added to the amount due the vendor for each full or partial month that the payment exceeds 30 working days. As an incentive for earlier payment, bidders for state contracts are encouraged to offer discounts for payments made in less than the prescribed 30 days.

18. MODIFICATION OR WITHDRAWAL OF OFFERS: An offer may be modified or withdrawn by electronic or written notice received prior to the hour and date specified for receipt of offers. An offer may also be withdrawn in person by an offeror or his authorized representative, if his identity is made known and he signs a receipt for the offer, but only if the withdrawal is made prior to the hour and date set for receipt of offers. A vendor may withdraw or modify an online bid response before the time set for opening bids by applying the appropriate electronic signature and following the procedure in the state's procurement system.

19. LATE OFFERS AND MODIFICATIONS: The state's procurement system will not allow submission of online responses after the published date and time for bid closing. A hardcopy offer or a modification of an offer received at the office designated in the solicitation after the hour and date specified for receipt shall not be considered for an award of contract, unless:

- a. No bids are received other than the late bid; and
- b. The need of an agency is determined to preclude the re-solicitation of bids; and
- c. The offer is evaluated and found to serve the best interest of the Commonwealth.

20. MULTIPLE AND ALTERNATE BIDS: A bidder shall submit one response to the solicitation and shall not propose more than one model and brand for each bid item. Except for tiered pricing, multiple or alternate bids offering more than one bid price in total or by line-item shall be cause for rejection, unless specifically called for in the Solicitation.

21. AWARD OF CONTRACT:

- a. A contract shall be awarded to the responsible offeror whose offer conforming to the solicitation provides the best value.
- b. The Commonwealth reserves the right to reject any offers and to waive informalities and minor irregularities in offers received.

- c. An electronic or a written award furnished to the successful offeror within the time for acceptance specified in the offer shall constitute a binding contract, without further actions by either party.

The Commonwealth only notifies the successful offeror of an award. Any other interested party may view contract awards posted on the Commonwealth of Kentucky's eProcurement web site. The date the contract award is posted to the Commonwealth of Kentucky's eProcurement web site shall serve as the official notification of award for actions pursuant to KRS 45A.285(2).

22. CONTRACT MODIFICATIONS: During the period of the contract, a modification shall not be permitted in any of its conditions and specifications, unless the contractor receives electronic or written approval from the Office of Material and Procurement Services. If the contractor finds at any time that existing conditions make modification in requirements necessary, the contractor shall report the matter promptly to the Office of Material and Procurement Services for consideration and decision. All contract modifications shall be subject to the provisions of 200 KAR 5:311.

23. SELLER'S INVOICES: Invoices, if required, shall be prepared and transmitted to the agency receiving the goods or services. One copy shall be marked "original" unless otherwise specified. Each invoice shall contain at least the following information:

- a. Contract and order number;
- b. Item numbers;
- c. Description of supplies or services;
- d. Sizes;
- e. Quantities
- f. Unit prices; and
- g. Extended totals.